

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 98-0158 CSET
Controlled Substance Excise Tax
For Tax Periods: 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: IMPOSITION

Authority: IC 6-7-3-5, IC 6-7-3-19

Taxpayer protests the assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

On October 13, 1997, Taxpayer was arrested and charged with Dealing in Cocaine and Possession of Cocaine. The Court granted Taxpayer's Motion to Suppress and the State subsequently filed a Motion to Dismiss on March 24, 1998. The Department issued a Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on March 23, 1998. The Prosecutor notified the Department in writing on March 26, 1998 that it would not proceed with criminal charges against Taxpayer. Taxpayer timely protested the assessment and a hearing was held. More facts will be provided as necessary.

Controlled Substance Excise Tax-Imposition

DISCUSSION

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the delivery and possession of cocaine in the State of Indiana. Taxpayer bears the burden of proving that he did not possess the subject cocaine. IC 6-8.1-5-1(a). Taxpayer did not sustain that burden of proof.

IC 6-7-3-19 governs the commencement of collection proceedings. Sec. (2) states that the Department may not commence collection proceedings unless the Department;

is notified in writing by the prosecuting attorney of the jurisdiction where the offense occurred that the prosecuting attorney does not intend to pursue criminal charges of delivery, possession, or manufacture of the controlled substance that may be subject to the tax required by this chapter.

In the instant case, the Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand was prepared on March 23, 1998. Interest was calculated from that date. The Prosecutor notified the Department in writing of his intention not to prosecute on March 26, 1998. The Warrant was issued and filed with the County Clerk and Sheriff on March 31, 1998. The Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand was issued concurrently with the warrant. Therefore, the Department did not commence any collection proceedings until after the receipt of the Prosecutor's letter.

FINDING

Taxpayer's protest is denied.